

REMARKS

This Amendment responds to the Final Office Action mailed July 24, 2009. Claims 1, 3-12, 14, 15, 17-20 and 28-30, and 33-34 are currently pending. Independent claims 1 and 15 are proposed to be amended to incorporate claims 31 and 32 respectively, thereby clarifying a distinguishing feature by reciting that the panels are curved in the longitudinal direction. Entry of the proposed claim amendments is proper insofar as incorporating subject matter from dependent claims into respective independent claims raises no new issues requiring further search or consideration. Reconsideration is respectfully requested.

Request for Personal Interview

A diligent effort has been made to place this application in condition for allowance. Should the Examiner believe that this application is not in condition for allowance, the Examiner is respectfully requested to contact the undersigned at the number below before issuing a further action to discuss any issues that may remain.

Art Rejections

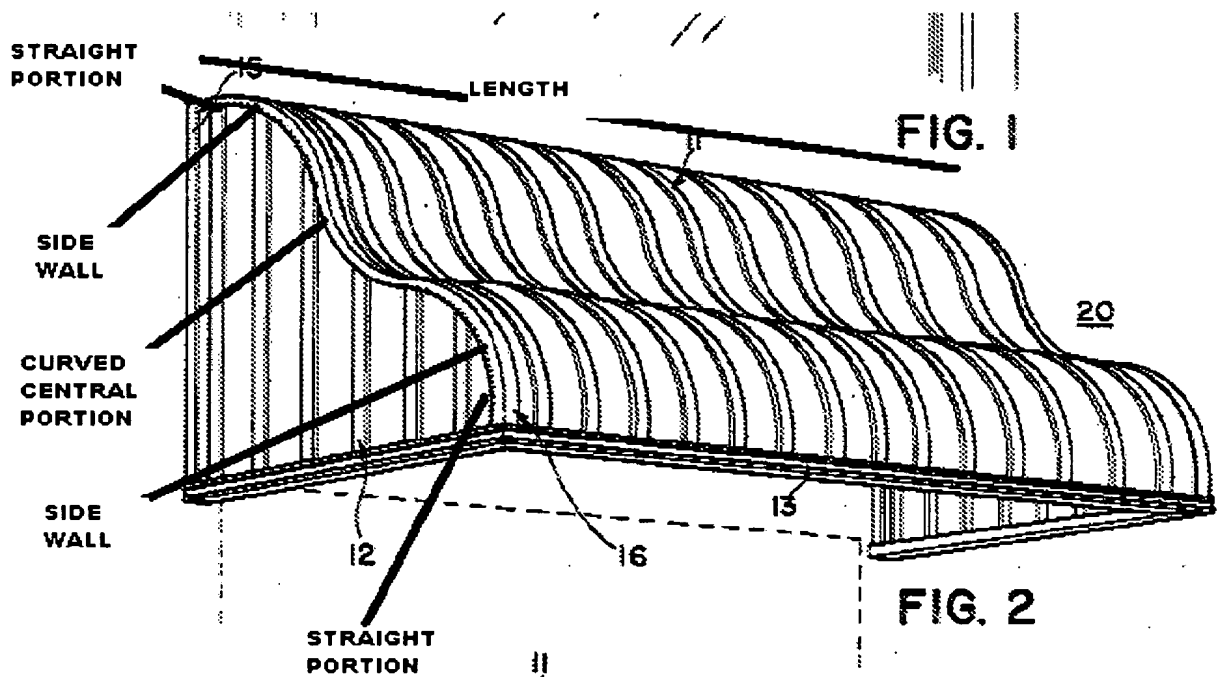
Claims 1, 3, 31, and 33 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 4,796,393 ("Toti") in view of U.S. Patent No. 4,505,084 ("Knudson"). Office Action at p. 2. Claims 1 and 3-12 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Knudson in view of Toti and U.S. Patent No. 4,358,916 ("Lacasse"). Office Action at p. 3. Claims 14, 15, 17-20, 28-30, 32, and 34 stand rejected as being allegedly unpatentable over Knudson in view of Toti and Lacasse, and further in view of U.S. Patent No. 4,579,785 ("Karoubas"). Office Action at p. 6. Independent claims 1 and 15 have been amended to clarify a distinguishing feature, and Applicants respectfully submit that the pending claims are not obvious in view of the applied references.

The Rejection Of Claims 1, 3, 31, And 33 Over Toti In View Of Knudson Fails To Make Out A Prima Facie Case Of Obviousness Because, Even If Combined *Arguendo* As Suggested By The Office, The Hypothetical Combination Would Not Yield The Claimed Subject Matter

Independent claim 1 has been amended to highlight a distinguishing feature, namely that the building panel is *curved in the longitudinal direction*. The building panel of claim 1 as amended thus comprises: (a) a curved central portion having a curved shape in cross section perpendicular to a longitudinal direction along a length of the building panel, the

curved central portion having transverse corrugations therein; (b) a pair of side wall portions extending from opposite ends of said curved central portion in cross section, said curved central portion being concave-shaped in cross section from a perspective between said side wall portions, wherein said sidewall portions comprise straight portions that extend tangentially in cross section from the concave-shaped curved central portion; (c) a pair of complementary wing portions extending from said side wall portions; (d) wherein the building panel is *curved in the longitudinal direction*.

In rejecting claim 31 (now canceled and incorporated into claim 1), the Office asserted that Toti discloses a “building panel . . . curved in the longitudinal direction.” Office Action at p. 3. This assertion is not supported by Toti. As reproduced below from page 5 of the Office Action, the Examiner marked up FIG. 2 to define the length of the awnings in Toti to extend along the plane of the page. It is readily apparent by inspection of FIG. 2 that Toti is not curved in a longitudinal direction, but rather is curved in a cross-sectional direction. Thus, even if Toti were combined with Knudson to include Knudson’s complementary wing portions as suggested by the Examiner, the hypothetical combination still would not yield the claimed subject matter.



**Fig. 2 of Toti (US 4,796,393) Showing Examiner's Mark-ups
(Longitudinal Direction is Across the Plane of Paper)**

Furthermore, there is no suggestion in Toti or Knudson, either singly or in combination, to provide a longitudinal curve to the awning of Toti. Toti's awning is described as having an curve in a transverse direction for aesthetic reasons, and having straight top and side frame assemblies to properly mate with buildings. Toti, FIG. 2; col. 7, lines 1-15; col. 7, lines 35-39. Knudson, in contrast, is directed to a building panel for constructing buildings. Knudson, Abstract. Knudson provides no teaching to provide a longitudinal curve to an awning and the Office has provided no rationale for imparting a curve to the awning of Toti.

Based on the above, the Office has failed to make out a prima facie case of obviousness over Toti in view of Knudson. Accordingly, the rejection of claim 1 in view of Toti and Knudson should be withdrawn. Claims 3 and 33 are also allowable over Toti and Knudson at least by virtue of dependency.

The Obviousness Rejections Over Knudson In View Of Secondary References Fail To Make Out A Prima Facie Case Of Obviousness Since The Office's Reason For The Suggested Modification Is Wholly Unsupported By The Evidence Of Record

In rejecting claims 1 and 15 at pages 4 and 7 of the Office Action, the Examiner asserts without citation to any portion of any reference that one skilled in the art would have found it obvious to modify Knudson's panel to include a curved central portion. As a supporting rationale, the Examiner alleges that a curved central portion would have been "easier to fashion" and would allow one to "easily vary the configuration of the panel." Office Action at 4 and 7. The Examiner provides no support for this allegation and instead makes the broad assertion that such is "shown by the secondary references." Office Action at 7. The Office cites no portion of any of the references that suggests that it would be easier to fashion a panel with a curved central portion as opposed to a panel with a straight central portion and sidewalls as disclosed in Knudson. Indeed, Applicants review of the applied references reveals no such suggestion. The Office's assertion is therefore facially unsupported and must be withdrawn. Under *KSR*, the standard for obviousness is not whether a prior art *can be* modified, but rather whether there is a teaching in the art or knowledge of one of skill in the art to make the modification.

The Rejections Based On Knudson As The Primary Reference Do Not Make Out A Prima Facie Case Of Obviousness Because Of Internal Inconsistencies And Failure To Identify What Is Supposedly Being Modified

The obviousness rejections of independent claims 1 and 15, and dependent claims 3-12, 14, 17-20, 28-30, 32, and 34 over Knudson and various secondary references are facially improper because of internal inconsistencies and failure to identify what is supposedly being modified and why. The rejection therefore fails to set out a proper *prima facie* case of obviousness and must be withdrawn. Among the deficiencies are the following:

1) The rejection at page 3 of the Office Action purports to utilize Knudson as a primary reference and Toti and Lacasse as secondary references to reject claim 1 (as best Applicants can determine). This rejection is deficient in at least three respects. First, it recites claim elements (a) to (c) but omits certain aspects of the claims, namely omitting that the curved central portion has “a curved shape in cross section perpendicular to a longitudinal direction along a length of the building panel.” Moreover, the rejection then purports to map certain features against Figure 13 of Knudson, and then purports to map the same features against Figure 9 of Lacasse. As such, the rejection provides no coherent explanation of which features are being relied upon for what. Furthermore, the rejection fails to describe what part of Toti the Examiner is relying on, stating in total: “See above for the disclosure of Toti.” The rejection is thus confusing, internally inconsistent, and unclear as to whether anticipation or obviousness is being alleged.

2) The rejections detailed against independent claims 1 and 15 contain no explanation about what aspect of Lacasse or Toti is supposedly being used to modify Knudson (or vice versa, if Lacasse or Toti is the primary reference) and *no reason* for the hypothetical combination. Rather, it is not until the discussion of *claim 3* (Office Action at p. 4) and *claims 17* (Office Action at p. 7) that the Office even alleges that Knudson should be modified to include an “arc” central portion of Lacasse. Similarly, even though Toti is supposedly relied on for the rejections, specific disclosure of Toti is only discussed in two places: (1) in the discussion of *claim 3* (Office Action at p. 4), where the Office alleges that Knudson should be modified to include an “arc” central portion of Toti; and (2) in the discussion of *claim 34* (Office Action at p. 8) the Office alleges that “Toti discloses the building structure of claim 15, wherein the curved central portion is curved in cross section over an entire width of the curved central portion.” This second reference to Toti fails to

even include a suggested modification to Knudson and instead seems to suggest that Toti anticipates claim 34.

In sum, it is not clear which reference is the primary reference and what is hypothetically being modified or why. In addition, given the way that Lacasse and Toti seem to be applied against claims 1 and 15, it is not clear whether anticipation or obviousness is being alleged. Accordingly, withdrawal of the rejections is respectfully requested.

The Rejections Based On Knudson As The Primary Reference Do Not Make Out A Prima Facie Case Of Obviousness Because The References Do Not Disclose Or Suggest A Longitudinally Curved Building Panel With Transverse Corrugations In A Curved Central Portion That Has A Curved Shape In Cross Section Perpendicular To A Longitudinal Direction

The rejection set forth at page 3 of the Office Action purports to be an obviousness rejection of claim 1 based on Knudson as a primary reference and Toti and Lacasse as secondary references. As noted above, it is not clear whether Knudson or Lacasse is being used as the primary reference. In any event, claim 1 is not obvious regardless of which reference is used as the primary reference.

Claim 1 is not obvious in view of the applied references if Lacasse is being used as the primary reference. The Office Action at page 3-4 purports to reject claim 1 as unpatentable over Knudson in view of Toti and Lacasse, and then cites Figure 9 of Lacasse for purportedly disclosing all of the claimed features. The Office Action alleges: that portion 330 of Lacasse is a curved central portion, that the alleged "curved central portion" has transverse corrugations therein, that features 328 correspond to the claimed pair of side wall portions, that features 329 correspond to the claimed pair of complementary wing portions, and that the remaining requirements of the claim are met by Figure 9 of Lacasse. The Office Action at pages 3-4 is silent about any hypothetical modification to Lacasse (or Knudson or Toti) insofar as the independent claims are concerned. Applicants disagree with the Office's assertions and submit that independent claim 1 is patentable over the Lacasse in view of the secondary references at least for reasons discussed below.

As noted above, claim 1 requires, among other things, 1) a curved central portion that has a curved shape in cross section perpendicular to a longitudinal direction along a length of the building panel, 2) sidewall portions that comprise straight portions that extend tangentially in cross section from the concave-shaped curved central portion, and 3) a longitudinally curved building panel. Contrary to the Office's allegations, it is clear from

Figures 9 and 10 of Lacasse (shown below) that the panel of Lacasse does not have *transverse* corrugations therein, as required by independent claims 1 and 15. As shown in Figure 9 of Lacasse reproduced below, contrary to the Examiner's assertion, Lacasse clearly discloses only longitudinal corrugations extending along the length of Lacasse's panel. The longitudinal direction of Lacasse's panel is out of the plane of the paper, and the cross sectional direction of Lacasse's panel is in the plane of the paper. This is evident since Lacasse explicitly refers to Figure 10 (which shows the shape of the Figure 9 panel in the plane of the paper) as "a transverse cross-section." See Lacasse at col. 6, lines 16-17.

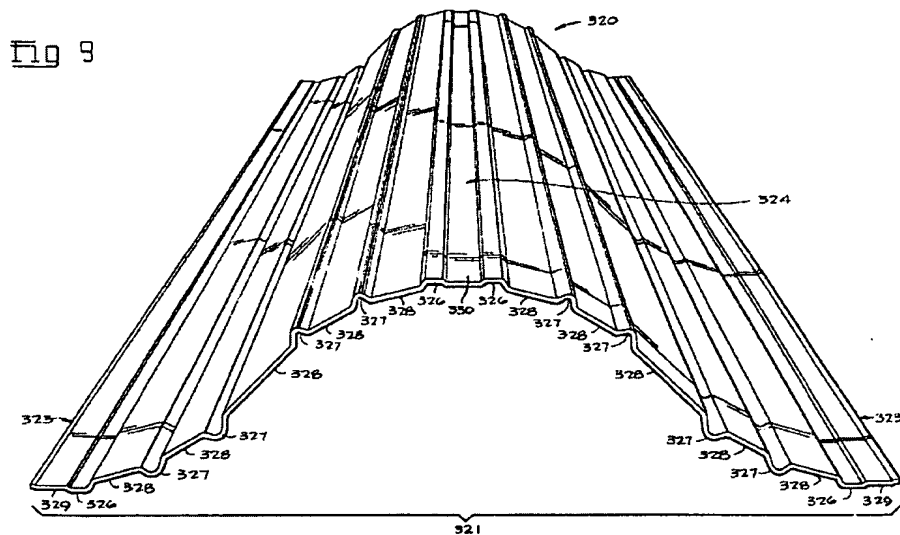


Fig. 9 of Lacasse
(Longitudinal Direction is Out of Plane of Paper)

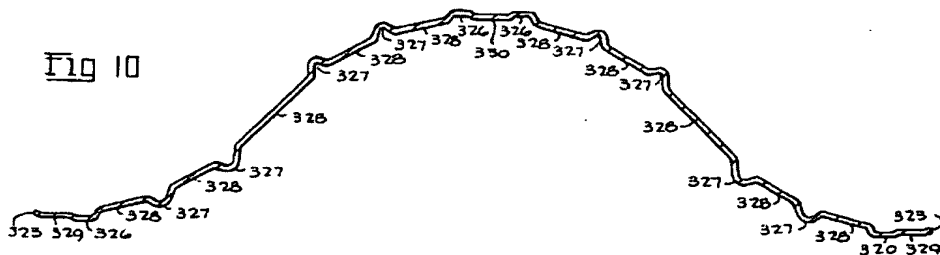


Fig. 10 of Lacasse
(Longitudinal Direction is Out of Plane of Paper)

Moreover, the present application treats the "cross section" terminology in the same way that Lacasse treats it. In particular, regarding Figure 9 of the present application reproduced above, the present application states that "FIG. 9 is a cross section view of one

embodiment of a building panel . . .” Application, ¶ [0033]. Thus, it is abundantly clear that the panels disclosed in Lacasse do not have transverse corrugations therein.

In addition, the Office Action makes no allegation whatsoever for hypothetically modifying Lacasse’s panel to have transverse corrugations. Indeed, such an allegation would be contrary to the teachings of record. In particular, U.S. Patent No. 3,009,509 (“Martin”) of record contains an express teaching away from transverse corrugations in a curved central portion as described in Applicants’ Amendment dated October 9, 2007 at pages 5-6 and as further discussed herein below.

Moreover, Lacasse fails to disclose or suggest imparting a longitudinal curve to a building panel as recited in claim 1. As shown in Figure 9, the panels of Lacasse are straight in a longitudinal direction.

Accordingly, it is plainly evident that the applied references, using Lacasse as the primary reference, do not render independent claim 1 obvious.

Moreover, Applicants disagree with the Office’s assessment of Lacasse. Contrary to the Office’s suggestion, portion 330 shown in Lacasse’s Figure 9 is not curved, but is instead straight, as is plainly evident from Figure 9 itself. Further, portions 329 do not “extend tangentially *in cross section* from the concave-shaped curved central portion” as required by the independent claims. Thus, the Office’s obviousness rejection, assuming Lacasse is used as the primary reference, is further flawed for these additional reasons.

In addition to failing to render claim 1 obvious, it is apparent from the discussion above that Lacasse also does not anticipate claim 1.

Claim 1 is also not obvious in view of the applied references if Knudson is being used as the primary reference. Claim 15, which has been rejected over Knudson in view of secondary references, is non-obvious for similar reasons.

In rejecting claim 1, the Office alleged that the building panel shown in Figure 13 of Knudson has a curved central portion, stating “the building panel is curved in a longitudinal direction as shown in figure 13.” Office Action at p. 3. Claim 1 recites that the curved central portion of the building panel recited in claim 1 has a *curved shape in cross section* perpendicular to a longitudinal direction along a length of the building panel. Thus, while Knudson may disclose a building panel that is curved in the longitudinal (lengthwise) direction, Knudson does not disclose a building panel with a *curved shape in cross section* perpendicular to a longitudinal direction along a length of the building panel, as discussed further below.

To illustrate differences between the building panel shown in Figure 13 of Knudson and that required by claim 1, a non-limiting example of a building panel according to the present application is shown in cross section Figure 9 reproduced below. Figure 13 of Knudson cited by the Office (perspective view of Knudson's panel) and Figure 3 of Knudson (cross sectional view of Knudson's panel) are also reproduced below for comparison.

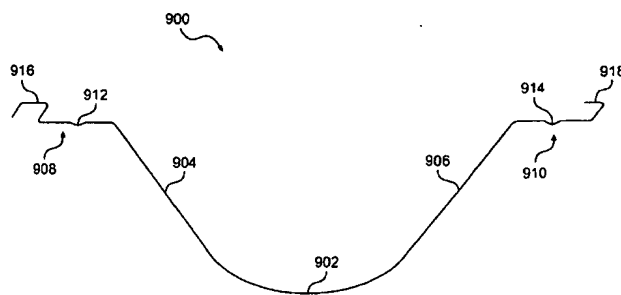


FIG. 9

**Fig. 9 of Present Application Showing Exemplary Panel in Cross Section
 (Longitudinal Direction is Out of Plane of Paper)**

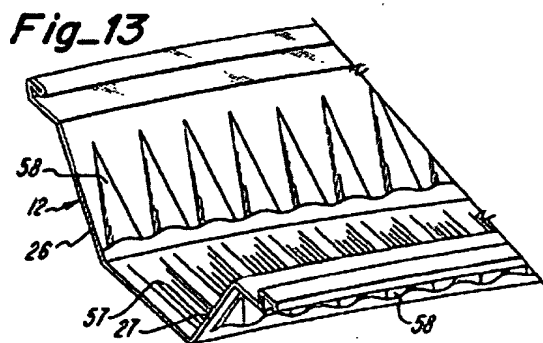
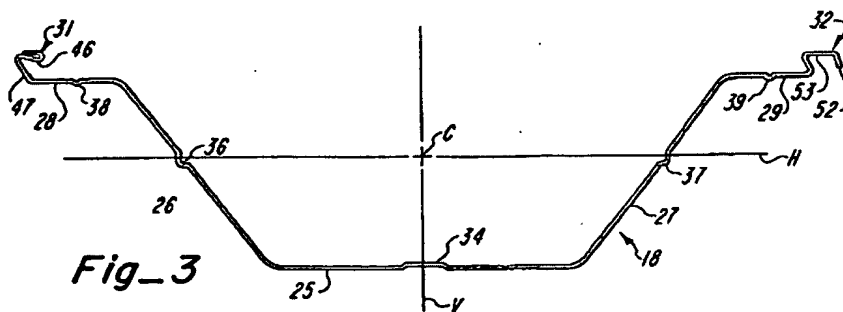


Fig. 13 of Knudson (US 4,505,084) Showing Panel in Perspective View



**Fig. 3 of Knudson (US 4,505,084) Showing Panel in Cross Section
(Longitudinal Direction is Out of Plane of Paper)**

Claim 1 requires, among other things, 1) a curved central portion that has a *curved shape in cross section* perpendicular to a longitudinal direction along a length of the building panel, and 2) sidewall portions that comprise straight portions that extend tangentially *in cross section* from the concave-shaped curved central portion. Figure 9 of the present application illustrates a non-limiting example wherein side wall portions 904 and 906 comprise straight portions that extend tangentially in cross section from the concaved shaped curved central portion 902. In contrast, the panel of Figure 13 of Knudson (also shown in cross section in Figure 3 of Knudson) comprises a straight central portion 25 that is not curved *in cross section* perpendicular to a longitudinal direction along a length of the building pane. The sidewall portions 26 and 27 of Figures 3 and 13 of Knudson do not extend tangentially in cross section from a concave-shaped curved central portion. Accordingly, Knudson fails to disclose all of the features of claim 1. Since the Office has presented no specific modifications to Knudson to address these deficiencies, nor any rationale for making any modifications, the Examiner has failed to present a prima facie case of obviousness for claim 1. Claim 15 has similar recitations as claim 1, and therefore is non-obvious over Knudson for at least the same reasons.

In addition, the Office's rejection of dependent claim 3 (and claim 17), which alleges a modification of Knudson in light of Lacasse and/or Toti, is itself flawed. With regard to claim 3, the Office Action states, "Lacasse and [T]oti discloses wherein said curved central portion comprises an arc. . . . [I]t would have been obvious to fashion a panel to have a curved shape in cross section perpendicular to a longitudinal direction along the length of the building panel and to include the arc central portion to construct a central portion that is easier to fashion as shown by the secondary references in order to easily vary the configuration of the panel." Office Action at p. 4. This rejection is flawed at least because it is unspecific and presents assertions with no evidentiary basis. With regard to "easier" to fashion, easier than what? With regard to "easily vary[ing] the configuration of the panel," varying the configuration to what? In addition, the Office's proffered reason – to construct a central portion that is easier to fashion and configure – is made without any evidentiary basis whatsoever. The Office Action cites no evidence whatsoever for these propositions. In short,

even the meager reasons offered in the Office Action for hypothetically modifying Knudson in connection with dependent claims 3 and 17 are facially insufficient.

In addition, the Office's reliance on Karoubas is itself flawed because it offers a feature from Karoubas that the rejection contends Knudson already possesses, namely, transverse corrugations. Page 6 of the Office Action states, "Knudson discloses a building panel comprising: (a) a curved central portion 25 having a transverse corrugation therein; Karoubas discloses corrugations extending in both directions transverse and coextensive; one's reference point determines the transverse and coextensive direction. It would have been obvious to include one, either or both directions for the corrugations in order to improve stiffening or buckling of the building panel." On its face, this rejection purports to cast Knudson as an anticipatory reference, which it is not for reasons already explained in detail above.¹ The Office Action then fails to suggest a modification to Knudson based on Karoubas. In particular, the Office's statement that the corrugations of Knudson can extend in either direction based upon one's reference point is not modification, particularly where the Office has alleged that Knudson already discloses transverse corrugations. In addition, the Office's comment regarding reference point, even if true, is moot because independent claims 1 and 15 recite that the claimed building panels are in *cross section* perpendicular to a longitudinal direction along the length of the building panel. The claims thus explicitly distinguish "longitudinal" (lengthwise, or what the Office calls coextensive) and "transverse" (crosswise) by virtue of reciting them in connection with structural features.

Moreover, Karoubas cannot make up for the deficiencies of Knudson. Karoubas does not disclose transverse corrugations in a *curved central portion* of a panel having a curved central portion with a curved shape in cross section perpendicular to a longitudinal direction along a length of the building panel. Rather, Karoubas discloses corrugated metal decking having interconnecting webs 14 containing embossments 16 therein and having a rib 13 in an otherwise *straight center portion* 12. See Karoubas Figure 1 (reproduced below) and col. 3, lines 5-25. The rib 13 is arranged longitudinally along the length of the panel, and the embossments 16, which the Office evidently alleges correspond to the transverse corrugations, are not formed in the central portion 12, but, rather, are formed in what the present application would consider side wall portions. Thus, there is no teaching in Karoubas

¹ As discussed previously herein, and as shown in Figures 3 and 13 of Knudson reproduced herein above, Knudson does not disclose 1) a curved central portion that has a *curved shape in cross section* perpendicular to a longitudinal direction along a length of the building panel, and 2) sidewall portions that comprise straight portions that extend tangentially *in cross section* from the concave-shaped curved central portion.

of transverse corrugations in a *curved central portion* of a panel having a curved central portion with a curved shape in cross section perpendicular to a longitudinal direction along a length of the building panel. For at least these reasons, Karoubas does not make up for the deficiencies of Knudson.

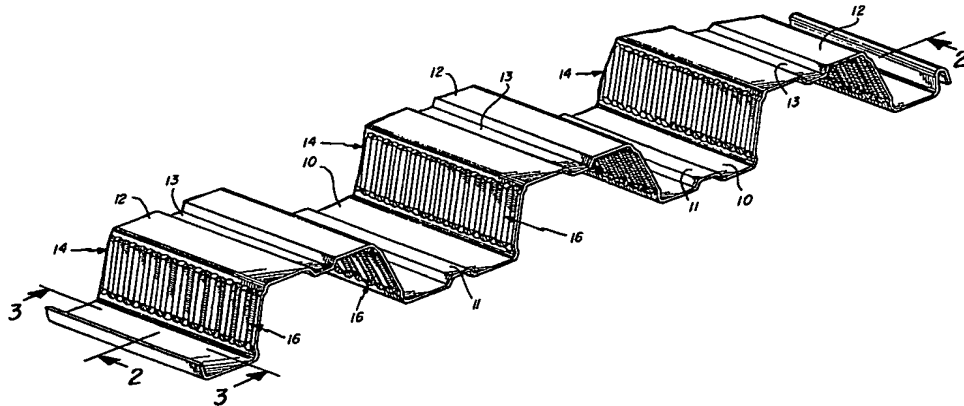


Fig. 1 of Karoubas

Accordingly, regardless of whether Lacasse or Knudson is treated as a primary reference, it is readily apparent that the applied references, either singly or in combination, do not teach a building panel with 1) a curved central portion that has a curved shape in cross section wherein the curved central portion has transverse corrugations therein, 2) sidewall portions that comprise straight portions that extend tangentially in cross section from the concave-shaped curved central portion, and 3) a curve in the longitudinal direction. Thus, even if hypothetically combined as suggested by the Office, the applied references would not yield a building panel (or building structure comprising such panels) as claimed.

In addition, based on the comments above, it is further apparent that neither Lacasse, nor Knudson, nor Karoubas, nor Toti can anticipate independent claims 1 and 15.

Withdrawal of the rejection and allowance of independent claims 1 and 15 are respectfully requested for at least these reasons. Claims 3-12, 14, 17-20, 28-30 and 34 are allowable at least by virtue of dependency.

The Office's Reliance on Toti In Rendering the Obviousness Rejections Is Improper Because Toti Is Not Analogous Art

The Examiner's rejection relies on Toti as the primary reference in rejecting claims 1, 3, 31, and 33, and as a secondary reference in rejecting claims 1, 3-12, 14, 15, 17-20, 28-30, 32, and 34. Applicants respectfully disagree with the Examiner's reliance on Toti because Toti is nonanalogous art.

In considering obviousness, the scope of prior art that can be relied upon by the Examiner is limited. An Examiner can consider a reference in a field outside of the application's subject matter only if "it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole." MPEP § 2141.01(a)(I). In considering whether a reference would have been considered analogous to one of skill in the art, the courts have found that the similarities and differences in structure and function of the inventions carry great weight. MPEP § 2141.01(a)(II).

As an initial matter, Toti is not in the same field as the current application. Whereas Toti is directed to "a cover structure such as a decorative awning assembly for a window or door or a decorative fascia structure for a roof line, a porch or canopy cover and the like," Toti, col. 1, lines 6-9, the Applicants' disclosure is directed to building panels used to construct buildings, Application, ¶ [0001].

In addition, the structure of building panels in accordance with the present application are different from the structure of panels for a decorative awning. Toti describes the metal used to form the awning as preferably "aluminum having a thickness in the range of 0.018 inch-0.040 inch." A skilled artisan would know that such thin gauge aluminum would be completely inadequate to provide structural integrity for a building of any size. In comparison, the current application describes exemplary building panels as "formed from a single roll of ASTM standard A-653 steel sheet metal having a thickness ranging from about 24 gauge to 16 gauge." Application, ¶ [0038]. Other materials may be used if they meet "the desired engineering requirements and provide[] the necessary structural integrity." Application, ¶ [0038].

Furthermore, the function of building panels are significantly different from panels for decorative awnings. As a skilled person in the art would appreciate, the design constraints involved with supporting a building are significantly different than those that would be considered in producing a decorative awning. The weight of a building structure increases proportionately with its size. Therefore as the size increases, the building panels forming the building are subject to increased bending moments due to gravitational forces. Accordingly, building panels are designed with an eye toward being able to withstand large bending moments because the panels' ability to withstand such moments imparts design constraints on the building. In contrast, decorative awnings are typically limited in size and not subject to significant gravitational stresses; therefore the design constraints are primarily aesthetic.

Thus the disclosure of Toti would not commend itself to one of skill in the art of building panels.

Based on the above, it is clear that Toti is not in the same field of endeavor as the subject matter of the current application, nor does Toti disclose similar structure or function as the current application. Accordingly, Toti is not analogous art and the rejections relying upon Toti should be withdrawn.

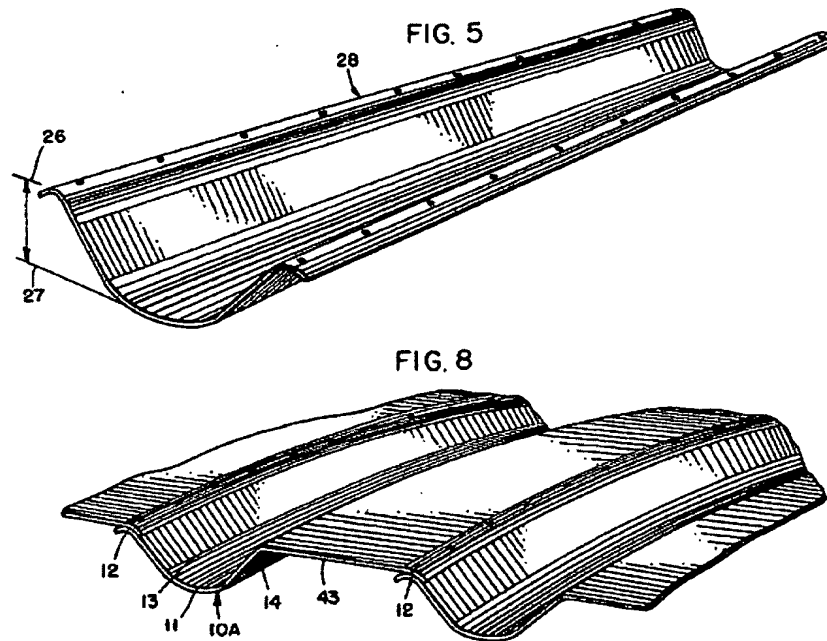
The Present Obviousness Rejections Improperly Ignore Art That Strongly “Teaches Away” From Using Transverse Corrugations In A Curved Central Portion

The present rejections also ignore art that teaches away from the claimed subject matter – art that the Office has previously considered anticipatory but now does not – and in doing so, the rejections improperly ignore subject matter that supports the patentability of the present claims. MPEP 2143.01(II) states:

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and *all teachings in the prior art must be considered to the extent that they are in analogous arts*. MPEP 2143.01(II), p. 2100-139, Rev. 6, Sept. 2007 (emphasis added).

In this present rejection, the Office is clearly not considering “all” the teachings in the prior art and what the combined teachings would have suggested to one skilled in the art.

Prior to Applicants’ recent amendments that recited that the curved central portion had transverse corrugations therein, the Office had rejected the claims as allegedly anticipated by U.S. Patent No. 3,009,509 (“Martin”). However, Martin contains an express teaching away from transverse corrugations in a curved central portion as described in Applicants’ Amendment dated October 9, 2007 at pages 5-6. For purposes of illustration, Figures 5 and 8 of Martin are shown below. Martin is not now being applied in the present rejection. Nonetheless, Martin is pertinent because the Office previously considered it an anticipatory reference, and now, after being shown that the claimed subject matter is distinct at least because Martin teaches away from doing what is claimed, the Office seeks to ignore it -- contrary to the instructions noted in the MPEP as set forth above.



Figs. 5 and 8 of Karoubas

In response to the prior rejection based on Martin, Applicants amended the claims to recite that the curved central portion included corrugations therein, and highlighted portions of Martin's disclosure that teach away from using transverse corrugations as now claimed:

Heretofore, many panels of this type and configuration have been developed, but in nearly all cases transverse corrugations or the like have been formed in the panel in order to form the longitudinal arch in the panel. *It has been found that these cross or transverse corrugations weaken the panels.* (Martin, col. 1, lines 23-28, emphasis added.)

Still another object of this invention is in the provision of a generally trough-shaped and longitudinally arched structural panel, wherein the longitudinal arching may be accomplished *without resorting to cross corrugations thereby giving a more durable and stronger panel.* (Martin, col. 1, lines 36-40, emphasis added.)

A still further object of this invention is in the provision of a method of making a generally trough-shaped and longitudinally arched structural panel having smooth inner and outer surfaces wherein the arching of the panel is accomplished *without forming any cross corrugations therein thereby providing a stronger and more rigid panel.* (Martin, col. 1, lines 44-50, emphasis added.)

In other words, Martin discloses that transverse corrugations weaken the panel, and the Office seeks to ignore this disclosure, contrary to the MPEP's direction. The Office is

now silent on Martin and looks to art disclosing straight central portions that is on it's face less relevant than Martin. It is believed that the Office's approach in this regard is improper, and that the rejection of claims 1 and 15 should be withdrawn for at least these additional reasons.

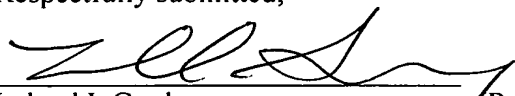
The Office is reminded that, as part of the consideration of obviousness, "a prior art reference that 'teaches away' from the claimed invention is a significant factor in determining obviousness" and that "the nature of the teaching is highly relevant and must be weighed in substance." MPEP § 2145(X)(D)(1) (internal quotations omitted). However, instead of considering and weighing the express teaching of Martin in issuing the instant rejection, the Office has now entirely discarded Martin without explanation. Martin's teaching away from the claimed subject matter and the failure of Knudson, Lacasse, Toti and Karoubas to yield the claimed subject matter are significant evidence of non-obviousness. The rejections should be withdrawn for at least these additional reasons, and the pending claims should be allowed.

Conclusion

In light of the above amendments and remarks, reconsideration and allowance of this application are respectfully requested.

Date: October 26, 2009

Respectfully submitted,


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